

~~ORIGINAL~~

No. 12193

United States
Court of Appeals

for the Ninth Circuit

MARICOPA PACKING COMPANY,
Appellant,

vs.

DONALD B. SHORTRIDGE, Trustee in Bank-
ruptcy of the Estate of Northern Meat Com-
pany, Inc., Bankrupt,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Arizona

FILED
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PAUL P. O'BRIEN, JR.

CLERK

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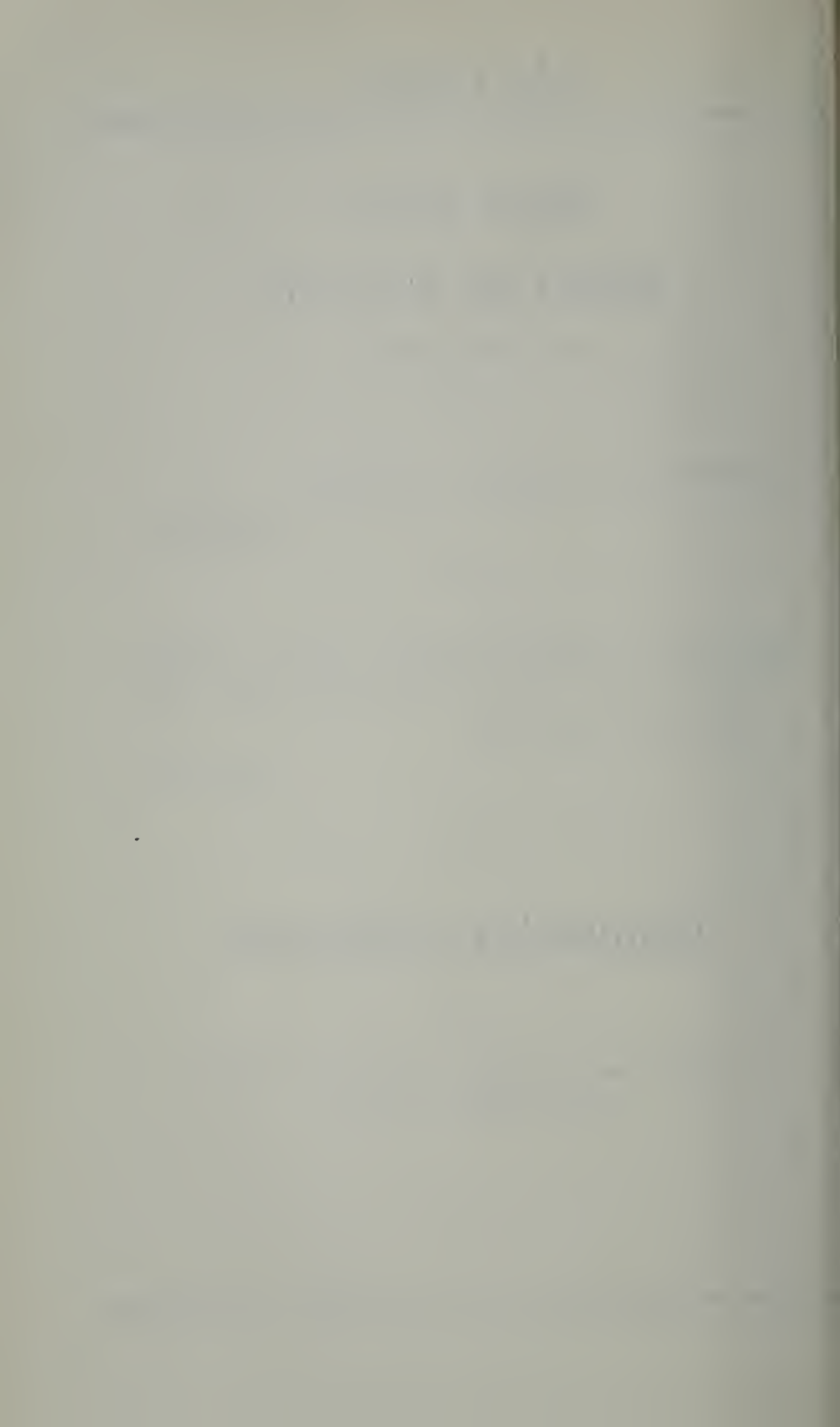
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Bond on.....	46
Certificate of Clerk to Transcript of Record on	51
Designation of Record on.....	48
Notice of.....	46
Statement of Points on (DC).....	49
Statement of Points and Designation of Record on (USCA).....	53
Bond on Appeal.....	46
Certificate of Clerk to Transcript of Record.....	51
Certificate of Referee on Petition for Review and Record on Review.....	2
Designation of Record on Appeal (DC).....	48
Designation of Record, Statement of Points and (USCA)	53
Finding of Fact, Referee's.....	34
Minute Orders:	
Oct. 25, 1948—Hearing on Petition for Review	45
Jan. 12, 1949—Order Affirming Referee's Find- ing of Fact and Order.....	45

	PAGE
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	46
Order Affirming Referee's Order and Finding of Fact (Minute Order of Jan. 12, 1949).....	45
Petition for Finding of Fact.....	31
Petition for Review.....	37
Exhibit A—Referee's Finding of Fact.....	40
Exhibit B—Balance Sheet, Mar. 24, 1948.....	42
Exhibit C—Balance Sheet, Mar. 25, 1948.....	44
Statement of Points on Appeal (DC).....	49
Statement of Points and Designation of Record (USCA)	53
Stipulation and Order Extending Time for Filing Petition on Review.....	35
Transcript of Proceedings.....	3
Exhibit A (Trustee's)—Letter, Sept. 20, 1948, Laird A. Racey to Donald B. Shortridge with enclosed Financial Report.....	26
Witnesses:	
Dooley, L. K.	
—direct	3
Racey, Laird A.	
—direct	5
—cross	19

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Appellee, in propria persona.

In the United States District Court for the
District of Arizona

In Bankruptcy—No. B-1215 Phx.

In the Matter of NORTHERN MEAT COMPANY,
INC., Bankrupt.

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW, AND RECORD ON
REVIEW

To the Honorable Judge of the District Court of
the United States, for the District of Arizona:

I, Stanley A. Jerman, Referee in Bankruptcy
herein, on the petition to review an order dated
September 15, 1948, made by me, hereby certify
as follows:

1. Petition for Review of Maricopa Packing
Company, an Arizona Corporation, dated October
15, 1948.

2. Order and finding of fact, dated September
25, 1948, to be reviewed on said petition.

3. Stipulation and order extending time for
filing petition for review.

4. A transcript of the evidence.

5. Exhibit: Northern Meat Company, Inc., finan-
cial condition as at March 24, 1948, prepared by
Laird A. Racey, CPA.

6. The questions presented are the alleged errors
set forth in the petition to review, dated Septem-
ber 25, 1948.

7. Memorandum Brief of petitioner in support of petition for review.

Dated: October 18th, 1948.

Respectfully submitted,
/s/ STANLEY A. JERMAN,
Referee in Bankruptcy.

[Endorsed]: Filed Oct. 18, 1948.

[Title of District Court and Cause.]

Grand Jury Room, Federal Building,
Phoenix, Arizona.

September 25, 1948.

Before: Stanley A. Jerman, Referee in Bankruptcy. [1*]

Appearances: Donald D. Shortridge, Trustee for the Estate of Northern Meat Company, Inc., Bankrupt; L. V. Rhue, representing Maricopa Packing Company; Mr. Cox, representing Mr. C. B. Winn.

PROCEEDINGS

The Referee: All right, proceed.

Mr. Shortridge: I would like to have Mr. Dooley sworn.

L. K. DOOLEY

was called as a witness and being first duly sworn testified as follows:

Direct Examination

Mr. Shortridge:

Q. State your name, please.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

(Testimony of L. K. Dooley.)

A. L. K. Dooley.

Q. What is your profession?

A. Certified Public Accountant.

Q. Were you an officer in the Northern Meat Company? A. Yes, secretary and treasurer.

Q. Did you keep the books of the Northern Meat Company? A. Yes.

Q. This Trustee's Exhibit A for identification, the books of the company, will you please identify these? I merely want to identify these books so subsequent books are based on them.

A. This is a ledger.

Q. This is the ledger of the Northern Meat [2] Company?

A. That is right, this is the cash receipts, checks, disbursements, cash paid out.

Q. These two represent the permanent records, accounting records?

A. Yes, plus the vouchers.

Q. Have they been prepared by you personally?

A. That is right.

Q. They are in your handwriting?

A. That is right.

Q. These books, to the best of your knowledge and belief, contain all the accounting of the company up to bankruptcy? A. They do.

Mr. Shortridge: That is all.

(Witness excused.)

LAIRD A. RACEY

was called as a witness and being first duly sworn testified as follows:

Direct Examination

Mr. Shortridge:

Q. State your name. A. Laird A. Racey.

Q. What is your profession?

A. Certified Public Accountant. [3]

Q. Mr. Rhue, will you stipulate to his qualifications?

Mr. Rhue: Yes.

Mr. Shortridge: Q. I hand you here a paper which I ask to be marked Trustee's Exhibit B for identification.

The Referee: These books I am not going to mark for identification. This will be Trustee's Exhibit A.

Mr. Shortridge: Q. Will you please tell me what this paper is?

A. This is the report prepared by me of the audit of the books of the Northern Meat Company, a corporation.

Q. In your investigation would you say there were any assets listed on the books of the Northern Meat Company that are not contained in this report?

A. Not to my knowledge.

Q. From your examination of the books and other records did you discover anything that led you to believe other assets and liabilities existed than those appearing on the records?

A. Not that other assets and liabilities existed. I do have one addition to this report which I would like to bring out. The report was [4] completed for

(Testimony of Laird A. Racey.)

the purpose of bringing up here some days prior to this and at that time, as I stipulated in the report, there were two of the accounts payable that I had been unable to confirm by direct confirmation. Subsequent to the completion and typing of the report, one of those accounts payable, those creditors replied to my request for a confirmation of the account owed to him, that did change the net result of the report to a certain extent.

The report shows the amount owing, that is as included in one item here on the liability side, accounts payable adjusted to March 24th, 1948, is shown as \$2,968.15. One of the items going to make up that total was an amount owed to the I. V. Packing Company which, as best I could determine, amounted to \$645.10 as of March 24th, 1948. The confirmation letter which was received on the 22nd of September, they stated that the Northern Meat Company owed them \$936.76 at that date. A second confirmation letter was received subsequent to the completion of the report resulted in a slight reduction in the amount owed to Golden Meat Company. The net result of the two confirmation letters received is an addition to the liabilities shown as [5] accounts payable of \$263.79.

Mr. Rhue: Q. Was that increase shown due as of March 25th or subsequent thereto?

A. I used the close of business as of March 24th and that original letter requested the amount owed as of that date, and it is in the file.

Mr. Rhue: Q. Does their reply show whether or not it was March 24th or the date on which they submitted their account?

(Testimony of Laird A. Racey.)

A. I have here the letter. Their reply written in pen and ink on the bottom of my letter, "In reply to the above, said account is \$936.76 as of March 24th, 1948." That was signed by Lillian Don of the Paramount Company with the notation "We are successors of the I. V. Packing Company and have bought the above account."

Mr. Shortridge: Q. I take it all the liabilities letters were sent out on a standard accountant's request form and you have received answers to each of them?

A. I have received answers to the major portion of them. I wrote letters rather than using the printed form. I have one of them in front of me.

Q. This is standard accounting procedure in [6] sending out this type of letter?

A. Yes, the standard audit procedure in performing any audit is to ascertain, so far as possible by outside methods, and verify through that procedure the sums and amounts owing on the books.

Q. Now going over here to the assets side, I notice you have cash on deposit, head office, First National Bank, \$805.87 and now I am going down to the amount, accounts receivable, \$8.10 that you estimate to be worthless, is that correct?

A. I was basing the estimate on the fact that apparently it has been impossible to collect that \$8.10 from them up to date.

Q. Now there were checks unpaid, you have also marked that as uncollected?

A. In conjunction with the returned checks, unpaid, I examined in the trustee's files a letter from

(Testimony of Laird A. Racey.)

a gentleman connected with the forgery department of the Police Department—

Q. Mr. Arnold, was it not?

A. It was someone else there. He stated that the makers of the checks could not be located. That was the substance of the letter.

Q. Here you have an item, prepaid insurance, [7] \$273.23, estimated to realize \$191.68. Where did you get that information?

A. I telephoned the insurance agency, Kleinman's Insurance Agency and spoke with Frank Kleinman and requested that he determine the amount of cash refund that would be available at that date, had these policies been cancelled. He stated he would write me. In lieu of a letter he telephoned me.

Q. You list the amount of prepaid interest as having no cash value.

A. The prepaid interest item, in my opinion, and from my examination, is merely an accounting method to set up the amount of interest which is included in the installment loans, and prorate them equitably over the life of the loan. As it is terminated it is not possible to get a refund of that interest so there is no cash realized.

Mr. Rhue: Q. Just what items does that cover, do you know?

A. I don't know if I understand you.

Mr. Rhue: There were several contracts there for equipment and machinery and so forth, was that interest covering those items?

A. That is my understanding from my examina-

(Testimony of Laird A. Racey.)

tion, the prepaid interest was on the [8] three contracts.

Mr. Rhue: If those contracts were to run for several months or a year, but were terminated or cancelled out, that interest would be an asset?

A. It is my understanding there is no manner in which any of that interest would be refunded to the borrower of the money. It is a part of the contract which must be paid over the length of the life of those installment loans, as the contract is paid. If the contract is paid prior to the regular date, the interest still is not refunded.

Mr. Rhue: Did you check those contracts to determine that fact?

A. I did not, that is customary procedure.

The Referee: I understand that. You pay your interest ahead of time when they make up your contract.

Mr. Rhue: That is true, but if it is paid off or refinanced, they don't pay that.

The Referee: You just try and get it back, you can't get a refund.

Mr. Shortridge: We submit here the only test to realize the value of the assets is of this date. \$50.82 listed as the cash realizing [9] the value of Industrial Commission insurance, how did you arrive at that?

Mr. Rhue: What is that, Mr. Shortridge?

Mr. Shortridge: \$50.82 Industrial Commission.

The Referee: That is your unused deposit with the Industrial Commission?

The Witness: Yes.

(Testimony of Laird A. Racey.)

The Referee: Did you ask the Industrial Commission about that?

A. There was in the file a statement of premiums due to the Industrial Commission and it showed a deposit of \$107 and an amount due which was slightly in excess of the \$56.18, but, of course, working that back to March 4th resulted in \$56.18 which would have been due at that date.

Mr. Rhue: The Industrial Commission shows here \$107.

The Referee: The book shows \$107.

Mr. Shortridge: \$107 less than accrued figures. Now the next item, a Chevrolet panel truck, \$1,021, subject to lien of \$615.96, estimated to realize unsecured creditors nothing. Please explain that.

A. In explaining that I would like to refer back to the report, the last sentence on Page 1 of the report. I stated I have made no attempt [10] to appraise the assets but have adopted those values which, in my opinion, most clearly reflect their true realizable value. Upon final disposition the Chevrolet truck and large items of equipment did not realize anything over and above the loans against them. It is my belief that the best measure of realizable value of any item is the amount realized at a sale. I have therefore used these figures in determining the realizable value of the truck and large items of equipment.

Mr. Rhue: You know when that truck was disposed of?

The Witness: I do not have the exact date, it was sold at an auction subsequent to March 24th.

(Testimony of Laird A. Racey.)

Mr. Rhue: This Northern Meat Company was a going concern on the 24th of March?

A. That is right.

Mr. Rhue: And that was an asset in use with the company at that time? A. Yes, sir.

Mr. Rhue: We object to this evidence, your Honor, as being immaterial here. It was a going concern, it had the assets and if it had been sold subsequent thereto that can be no evidence [11] of value on the 24th of March.

Mr. Shortridge: We submit the amount on the books is not what we are getting. The question is what that truck would have realized had it been sold on March 25th.

The Referee: The market value.

Mr. Shortridge: Yes.

The Referee: The objection is overruled.

Mr. Rhue: If your Honor please, that truck at that time when it was in use by the company and a going concern was certainly more valuable than subsequently when it went out of business.

The Referee: I don't think so, the market value would be exactly the same.

Mr. Rhue: Furthermore, the estimate is made here by the auditor, he isn't qualified to make such an appraisal. I object to any testimony he puts on as an appraiser, he is not qualified to appraise these properties at that time.

The Referee: He is giving testimony upon which he based his conclusion and it is up to me to pass on the weight or whether it is right or not.

Mr. Shortridge: I submit this is quite commonly submitted by certified public accountants. He is only

(Testimony of Laird A. Racey.)

presenting these figures for what they [12] are worth.

The Referee: Go ahead.

Mr. Shortridge: I am further prepared to show, your Honor, if necessary in this thing the truck was later sold at a loss.

The Referee: You are the trustee?

Mr. Shortridge: Yes.

The Referee: You make that statement as a trustee, as an officer of this court?

Mr. Shortridge: I will make the statement, a letter was received by me from the Assistant Manager of the First National Bank, August 25th, 1948, in which it was stated that the bank received the truck on May 26th, 1948, the amount of lien at that time—

Mr. Rhue: Just a minute, that is subsequent to March 24th.

The Referee: I will consider that.

Mr. Rhue: It would be a new asset after that.

Mr. Shortridge: That goes to the weight, not the admissibility. If this truck were bought on March 27th it would have stronger weight than if sold in May.

The Referee: Go ahead. In other words, the truck was sold in May at a loss. [13]

Mr. Shortridge: That is correct.

The Referee: All right, as an officer of the Court here you make that statement. I will take it for what it is worth. Anything else?

Mr. Rhue: I will object to this evidence because

(Testimony of Laird A. Racey.)

it is just the opinion of the bank, it is not worth anything, it is not evidence.

Mr. Shortridge: I don't know, they state in this letter they sold it at a loss. It says, "The public auction was held on June 26th, 1948 at the Arcade Garage and was purchased by the First National Bank for \$615.96."

The Referee: Did you discuss this with the bank?

Mr. Shortridge: No, I requested a letter.

The Referee: Go ahead.

Mr. Shortridge: "The truck was sold July 27th, 1948 to the Arizona Truck Sales and Service for \$575.52, from which was deducted the storage of \$24.48, leaving a net of \$551.04. The bank made no profit on this sale, in fact, we lost money. Trusting this information is sufficient, Very truly yours." Signed by C. W. Morris, Assistant Manager.

The Referee: Do you want to raise the—

Mr. Rhue: It is not admissible as to value. [14]

Mr. Shortridge: If this is not admissible as to the value of the car, then what evidence is admissible?

The Referee: I will consider it. Proceed.

Mr. Shortridge: You have here listed a number of assets, a Sanitary Scale, a Vaughn meat saw, a Chotillon beam scale and so on with an offset to the conditional sales contract leaving a balance of nothing for unsecured creditors. How did you arrive at that figure?

A. That item and also the walk-in freezing box above here were subject to conditional sales contracts held by the First National Bank. Upon final

(Testimony of Laird A. Racey.)

disposition they did not realize anything over and above the amount owed by them.

Mr. Rhue: When was that final disposition?

A. It was by court order.

Mr. Rhue: Do you recall the approximate date?

A. Around September 1st, I believe.

Mr. Rhue: Of this year? A. That is right.

Mr. Rhue: I object there as to this evidence not being permissible as of value of the 24th of March.

The Referee: That was August 14, 1948. [15]

Mr. Shortridge: Again we say this evidence should be considered and the question here is one of weight and not admissibility.

The Referee: All right, proceed.

Q. (By Mr. Shortridge): You have addition of small tools and equipment, no estimate available, in other words, you estimate——

A. In preparation of the statement I have tried to be as conservative as possible and in this particular item I could not ascertain that it was included on the appraisal sheet, nor could I find any means whatsoever of determining what the value might be, therefore, I have used the full book value, although it is my opinion they probably would not have produced that much.

Q. The various small item of office equipment, \$20, where did you get that?

A. For lack of any other figure that is the figure that was used on the appraisal for the purpose of the trustees.

Q. (By Mr. Rhue): What appraisal are you referring to? A. I believe Mr. Green's.

(Testimony of Laird A. Racey.)

Mr. Rhue: When?

A. On August 23rd, 1948.

Mr. Rhue: Not as of March 24th, 1948? [16]

A. As far as I know there was none available as of March 24th, 1948, had there been I would have used it.

Q. (By Mr. Shortridge): You have organization expense \$72.69, why haven't you listed that?

A. In my opinion it is not possible to realize anything out of organization expense.

Mr. Rhue: Was that a preferred charge or credited on the books for organization expense? It was all charged off except that amount?

A. That is my understanding, yes.

Mr. Rhue: You know the original amount charged off for organization expense?

A. I do not know if I understand you.

Mr. Rhue: In setting up the books they usually allow a certain amount charged off for organization expense, is that not a fact, and they charge that over a period of time, a year or eighteen months and charge off each month so much as an expense item.

A. That is one way of handling it.

Mr. Rhue: And this \$72 showed that all had been charged off except that amount, is that right?

Q. (By Mr. Shortridge): Has any amount of the organization expense been charged off? [17]

A. I can't answer that definitely, I would have to refer to the books. My thought is that there has been nothing charged off. (Consults book.) Accord-

(Testimony of Laird A. Racey.)

ing to the book that is the total amount set up originally for organization expense, nothing has been charged off.

Q. (By Mr. Shortridge): I believe you stated, Mr. Racey, that the accounts payable for the most part was verified and pointed out the differences of the amount of \$2968 shown and corrections for the I. V. Packing Company. Now starting up here, secured creditors, \$615.96, where did you get that figure?

A. That was shown on the books and confirmed by the bank confirmation mailed to the First National Bank.

Q. Where did you get the figure of \$1287?

A. In the same manner.

Q. And \$912.75? A. Same manner.

Q. Where did you get the figure—

Mr. Rhue: Just a minute, is that the total value of the property at that time or just the unpaid balance due on those conditional sales contracts?

A. Unpaid balance due on the conditional [18] sales contracts.

Q. And that does not reflect the value of the property? A. That is the liability.

Q. That is still due on those contracts?

A. That is correct.

Q. (By Mr. Shortridge): Where did you get the item of \$56.18?

A. That was taken from the statement of premiums due in the files from the Industrial Commission.

(Testimony of Laird A. Racey.)

Q. The \$167 due on—due the Collector of Internal Revenue?

A. That item was taken from the books.

Q. The item of \$15.65, Arizona Tax Commission, sales tax.

A. Also taken from the books.

Q. Just what was the constitution of this item of \$80.10, loans from stockholders, do you recall?

A. Various small loans made from time to time by the stockholders.

Q. Were all the stockholders represented, that is, there were three stockholders?

A. That is right.

Q. Mr. Winn, Mr. Richardson and Mr. Dooley. Were all three owed money by the company?

A. I will have to examine the books.

Mr. Rhue: Was there any evidence of that in the form of notes or just an item on the books?

A. In my inspection I do not recall finding any written evidence of those loans other than entries on the books themselves.

Mr. Rhue: For the money advanced by the stockholders? A. Yes, very small amounts.

Mr. Rhue: We wouldn't question that.

Mr. Shortridge: It won't be necessary to search, then. Turning to the asset side close to the bottom, you have a total owed to unsecured creditors, \$3,357.39, this represents what?

A. That is the total amount of the column on the extreme right hand side of the page of the financial statement. That is the total of the items owed

(Testimony of Laird A. Racey.)

to those creditors of the company excluding the creditors who had specific securities, such as First National Bank and the Arizona Industrial Commission.

Q. In other words, by excluding any amounts owed to parties in excess of the realizable value of collateral plus all the unsecured amounts, is that correct? [20] A. Will you repeat that?

Q. In other words, this amount of \$3,357.39 includes unsecured accounts plus any excess of loan liability over the realizable value of collateral?

A. That is correct.

Q. Now the next line over here, total estimated to realize for unsecured creditors, would you explain that figure?

A. That is the total of the second column from the left on this sheet. The amount is, by the methods I have explained here, was estimated would be realized if the assets had been converted to cash on that date, March 24th, 1948.

Q. What does this deficiency of unsecured creditors represent?

A. That is the amount of excess of the total owed to the unsecured creditors over the amount of the total estimated to realize for the unsecured creditors. At this point I want to call your attention again to the information I submitted regarding the accounts that were confirmed subsequent to the completion of the audit, which would make a change in two of these figures we have been talking about.

(Testimony of Laird A. Racey.)

Q. That difference would be to increase the [21] deficiency of the unsecured creditors?

A. To \$1,655.64.

Mr. Shortridge: I believe there is nothing more.

The Referee: You may cross-examine.

Cross-Examination

Mr. Rhue:

Q. According to your statement here, the total assets according to their book value as of March 24th, 1948, is shown to be \$7,858.12, is that right?

A. That is correct.

Q. And the liabilities on the same basis is shown to be \$6,093.79, you don't show that total, but under book value down to capital stock it shows \$6,093.79 according to my figures.

A. Let me check and I will answer that.

Q. Just the book values shown on liabilities.

The Referee: How much does that amount to?

Mr. Rhue: \$6,093.79. Q. Then you would be solvent about \$900, is that it, the difference between \$7,858 and \$6,093.79?

Mr. Shortridge: It would be \$1,774.33.

Q. (By Mr. Rhue): In other words, the book values as carried by the company March 24th, 1948, [22] show a surplus of \$1,774.33 of assets over liabilities?

The Witness: I may change the wording a bit, the word surplus, if it is deleted from there, I would say it showed an excess of assets over liabilities.

(Testimony of Laird A. Racey.)

The Referee: Do the books reflect any depreciation on the property owned by the company?

A. There is no provision on these books for any depreciation whatsoever.

The Referee: When was the property acquired?

A. The latter part of 1947.

The Referee: So it was about six months there?

A. Approximately.

The Referee: And no depreciation?

A. No.

The Referee: Was it new property or used?

A. The Chevrolet truck was used.

The Referee: How about the property used in connection with the business?

A. Again I cannot answer that, I don't know.

Q. (By Mr. Rhue): That Chevrolet you say was new?

A. No, it was a used one, 1940 Chevrolet [23] purchased in 1947.

Q. Now the matter of depreciation is simply an accounting proposition, is it not?

A. Depreciation is an accounting method of prorating the cost of an asset over the estimated life of that asset. It has no particular connection with the amount that might be realized on the sale from that asset.

The Referee: Do you know what would be allowed by the taxing authorities if they were to take the depreciation on this property that is used by the bankrupt?

A. The Chevrolet truck, which at that time was

(Testimony of Laird A. Racey.)

seven years old, I would not give a life of more than two or three years for taxing purposes.

The Referee: How about the other?

A. The other property, the freezing box, possibly eight to ten years life, the smaller items, scales and so forth, my estimate would be an average of five to seven years life.

Q. (By Mr. Rhue): Isn't it a fact that for income tax purposes a truck like the Chevrolet, the life would be five years and you would deduct 20 per cent a year for depreciation?

A. This truck was seven years old when they purchased it. [24]

Q. That is true, but isn't it a fact when making income tax returns that the life of a truck is specified as five years?

The Referee: A seven-year-old truck or a new one? On a new one it might be.

Mr. Rhue: Regardless of depreciation.

The Referee: You might be able to do it on a new truck but not on a used truck.

Mr. Rhue: A used truck right now would cost more than a new truck.

The Referee: Not now, there has been a terrific change in property this year, the bottom has dropped out.

Mr. Rhue: That was not the condition on March 24th.

The Referee: Oh, yes, it was, it has been the condition since early this year. That has been the history of the bankruptcy here. I think the Court

(Testimony of Laird A. Racey.)

can take judicial notice that that condition has changed the last six months. Go ahead, anything further?

Q. (By Mr. Rhue): Isn't it a fact that many mechanical assets, like a truck, even though it may be charged off under depreciation, is still an asset and still has value?

The Referee: I ask this question for [25] purposes of depreciation, for tax purposes, which is based on history. I just asked him what would be—what he as an accountant would be able to take for depreciation. It isn't for this particular property but generally. I wanted to know what he would depreciate this property. Go ahead.

Mr. Rhue: Isn't it a fact that as a going concern the assets of a going concern are all more valuable to it at that time than it is subsequent?

Mr. Shortridge: I object to that question. We are not concerned with going concern values.

Mr. Rhue: Yes, we are.

Mr. Shortridge: We are concerned with liquidating values.

The Referee: You may answer.

The Witness: That is probably true.

Mr. Rhue: So that the values that you have set up here then are estimated values that you have made back to that date?

A. They are not my estimates, they are based on various evidences I have found.

Q. In the files? A. That is correct.

Q. In this bankruptcy proceeding? [26]

(Testimony of Laird A. Racey.)

A. That is correct.

Q. That occurred after July 2nd?

A. That is right.

Mr. Shortridge: And from other sources also?

A. Yes.

Q. (By Mr. Rhue): Did you see this property on the 24th of March? A. I did not.

Q. Did you see it at any time?

A. I did not.

Mr. Rhue: We object to any evidence offered here as to the value of this property.

The Referee: Objection overruled.

Q. (By Mr. Rhue): Now in this procedure the books didn't reflect any depreciation or any other charges other than shown in your report?

A. That is true.

Q. And according to the books the values of the properties as of March 24th is \$7800?

A. That is true.

Q. And that the liabilities were approximately \$1700 less? A. That is correct.

Q. Now while you have set up here and shown that some of these assets were held under [27] conditional sales contracts, isn't it possible that property could have been sold on that date or for a time very near that date for something realized over and above the balance due on the contracts?

A. As a matter of opinion I do not believe I am qualified to answer that.

Q. But the company would have equities in there to the extent of what they had paid on that property? A. That is right.

(Testimony of Laird A. Racey.)

Mr. Rhue: That is all.

The Referee: Mr. Racey, how do you arrive at a going concern value? What do you call that?

A. Going concern value I understand is usually that value which is placed on the books, is used by the concern for statement purposes with the assumption that it will remain solvent and continue in business.

Q. What is it commonly called in language of laymen? You call it good will ordinarily.

A. Well, I could give you a good many definitions of various accounting authorities, but it certainly has the element of good will in it. [28]

Q. When you see good will on a statement, what does that usually mean?

A. The item good will on a statement, if regular accounting methods have been adhered to, reflect the excess of purchase price of the total assets over the actual appraised value at the date of purchase. It is a sum paid because the business is earning better than average profits.

Q. Could you determine from the books here this business was earning better than average profits on the 25th day of March?

A. It appeared to me that this business operated at a loss from the first week it started operations.

Q. So a business operating at a loss for approximately six months, or since its conception, as the case here, there would be no good will at all?

A. I certainly would not consider there would be any. Good will is based on the assumption that

(Testimony of Laird A. Racey.)

a firm is making money, not that it was losing money.

The Referee: That is all.

Q. (By Mr. Rhue): Good will is reputation of the outfit in business, how successful they are, how they pay their bills and all that sort of thing. [29]

A. For accounting purposes I would say no.

Q. There isn't any good will on the books in this case?

A. There is not.

Q. If this company were to go to the bank on the 24th day of March and ask for a loan in that statement they would set up their book values as you have set them up here?

A. That is a matter of opinion.

Q. There assets and liabilities would have been set up as in your accounting here?

A. I am not sure how they would set it up, that is how I would set it up.

The Referee: You always make a statement to the bank and the bank cuts it about half.

Mr. Rhue: Still, Your Honor, it is on the basis of the figures they submit.

The Referee: In this case, are you through?

Mr. Shortridge: I tried to get Mr. Green, the appraiser, he was unable to make it. I can get him on some other day if the Referee desires, he has examined those things.

The Referee: I am ready to rule on it. In this case there is no question in my mind at all that this company has been insolvent from the very beginning, certainly on the 25th of March. [30] I think

you creditors knew it and run an attachment on whatever there was and I would, therefore, find that the company was actually insolvent at the time your garnishment was levied. I will make a finding that it was actually insolvent on that date.

REPORTER'S CERTIFICATE

I Hereby Certify that the proceedings had upon the hearing of the foregoing cause are contained fully and accurately in the shorthand record made by me thereof, and the foregoing 31 typewritten pages are a full, true and accurate transcript of the same, to the best of my skill and ability.

/s/ SANDRA W. McFATE,
Court Reporter.

[Endorsed]: Filed Oct. 15, 1948. [31]

TRUSTEE'S EXHIBIT "A"

LAIRD A. RACEY

Certified Public Accountant

305 Arizona Title Bldg., Phoenix, Ariz.

September 20, 1948

Mr. Donald B. Shortridge
Trustee for the Estate of
Northern Meat Company, Inc., Bankrupt
Phoenix, Arizona

Dear Mr. Shortridge:

At your request I have audited the books and records of the Northern Meat Company, Inc., of Phoenix, Arizona, for the purpose of determining

the financial condition of that corporation as at the close of business on March 24, 1948 and whether, in my opinion, the assets of the corporation at a fair valuation, exceeded the liabilities.

In the performance of this audit, standard audit procedure has been followed wherever possible. Deposits in banks and amounts owing to banks were confirmed. Replies were received from eight of the thirteen open account creditors confirming amounts owed them. Three of those not replying were confirmed by examination of claims filed in bankruptcy court. No confirmation of amounts shown by the books as owing to the Eye Vee Packing Co., \$645.10, and Simmons Electric Company, \$15.43 on March 24, 1948, was obtained. The realizable amount of the prepaid insurance premiums was confirmed by the Kleinman Insurance Agency of Phoenix, Arizona.

Due to the period of time which had elapsed since March 24, 1948, it was not possible to use regular audit procedure in confirming the petty cash fund shown on the books as \$25.00; the cash on hand shown on the books as \$47.39; nor the merchandise inventory. Mr. L. K. Dooley, accountant for the corporation, informed me that a physical inventory of merchandise was taken weekly and that inventory sheets were included in the records. The inventory was computed from the inventory sheet dated March 27, 1948 by making adjustments for purchases and sales as disclosed by the records back to March 24, 1948. Other items of assets and liabilities were adjusted to properly reflect the book value as of that date.

The attached statement discloses the book value

of assets and liabilities, adjusted to correctly reflect the book value at the close of business on March 24, 1948. The statement also shows the estimated realizable value of the assets at that date.

I have made no attempt to appraise the assets but have adopted those values which, in my opinion, most clearly reflect their true realizable value. Upon final disposition, the Chevrolet truck and large items of equipment did not realize anything over and above the loans against them.

It is my belief that the best measure of realizable value of an item is the amount actually realized at a sale. I have, therefore, used these figures in determining the realizable value of the truck and large items of equipment. Other items are valued as indicated by the statement.

The attached statement discloses an excess of liabilities over the realizable value of the assets, based upon the above mentioned valuations, of \$1,391.85, which would result in a deficiency to unsecured creditors in this amount.

Subject to the limitations mentioned above on determination of inventory value, cash on hand, and petty cash, and the assumption that all assets of the corporation have been disclosed in the petition of bankruptcy, I believe the attached statement fairly presents the financial condition of the Northern Meat Company, Inc. at the close of business on March 24, 1948.

Respectfully submitted,

/s/ LAIRD A. RACEY, C.P.A.

LAR:v

NORTHERN MEAT CO., INC.

Statement Showing Book Value and Estimated Realizable Value of
Assets for Unsecured Creditors, as of Close of Business,
March 24, 1948

ASSETS

	Book Value	Estimated to Realize for Unsecured Creditors
Cash on Deposit, Head Office, 1st Nat'l Bk, Phoenix	805.87	805.87
Cash on Deposit, 1st Phx. Br., 1st Nat'l Bk, Phoenix	211.50	211.50
Cash on Hand	47.39	47.39
Petty Cash	25.00	25.00
Accounts Receivable	8.10	0.00
Returned Checks, Unpaid	164.24	0.00
Merchandise Inventory, computed	422.82	422.82
Prepaid Insurance	273.23	191.68
Prepaid Interest, installment loans.....	298.85	0.00
Utility and other deposits:		
Sales Tax license	1.00	0.00
Industrial Commission	107.00	0.00
Less accrued premiums due to 3/24/48	56.18	50.82
First Nat'l Bank, on night deposit bags.....	3.50	3.50
Light and Water	28.75	0.00
City of Phoenix, license	3.00	0.00
Equipment:		
1940 Chevrolet Panel Truck.....	1,021.00	
Subject to lien, 1st Nat'l Bk, of	615.96	
Walk-in Freezing Box, condenser and motor	2,509.10	
Subject to conditional sales con- tract, 1st Nat'l Bk, of.....	1,278.00	
Sanitary Chopper	485.00	
Federal Steakmaker	237.50	
Sanitary Scale	247.50	
Vaughn Meat Saw.....	595.00	

	Book Value	Estimated to Realize for Unsecured Creditors
Chotillon Beam Scale	48.50	
Above five items subject to condi- tional sales contract, 1st Nat'l Bk.	912.75	
Various small items of small tools and equipment	186.96	
No estimated of value available, full cost used		186.96
Various small items of office equipment.....	54.62	
Appraised value August 23, 1948.....		20.00
Organization Expense	72.69	0.00
	<hr/>	<hr/>
Totals.....	7,858.12	1,965.54
 Total Owed to Unsecured Creditors.....		3,357.39
Total Estimated to Realize for Unsecured Creditors		1,965.54
		<hr/>
Deficiency to Unsecured Creditors.....		1,391.85

LIABILITIES

	Book Value	Owed to Unsecured Creditors
Secured Creditors:		
1st Nat'l Bank—Loan on Chevrolet Truck..	615.96	0.00
1st Nat'l Bank—Conditional Sales Contract	1,278.00	0.00
1st Nat'l Bank—Conditional Sales Contract	912.75	0.00
(Above claims deducted contra from spe- cific assets listed as security)—Balance unsecured		0.00
Arizona Industrial Commission.....	56.18	
(Deducted contra, see deposits).....		0.00
Collector of Internal Revenue.....	167.00	167.00
Arizona Tax Commission, Sales Tax.....	15.65	15.65
Accounts Payable—per books, adjusted to 3-24-48	2,968.15	2,968.15

	Book Value	Owed to Unsecured Creditors
Secured Creditors:		
Loans from stockholders	80.10	80.10
Unrecorded Liability, for which claim has been filed:		
Jack Long—Salary 3-15-48 to 4-22-48	\$493.31	
Pro-rated to 3-24-48	0.00	126.49

CAPITAL

Capital Stock	4,500.00	0.00
Book Deficit	2,735.67*	0.00
	<hr/>	<hr/>
Totals.....	7,858.12	3,357.39

* Figures in red.

[Title of District Court and Cause.]

PETITION FOR FINDING OF FACT

Petitioner, Trustee in Bankruptcy of the above mentioned estate, respectfully alleges as follows:

I.

That on March 1, 1948, the Maricopa Packing Company, a corporation, filed an action Division No. 5 of the Superior Court of the State of Arizona, in and for the County of Maricopa, being Docket No. 59975, said action being a suit on unsecured claim against the Northern Meat Company, Inc., a corporation, for merchandise sold and delivered to said corporation, the now bankrupt, that such suit was in the amount of Five Hundred and Ninety-four and 12/100 Dollars (\$594.12).

II.

That on or about March 24, 1948, the Northern Meat Company, Inc., Defendant, now bankrupt, filed its answer; that on March 25, 1948, the Maricopa Packing Company, Plaintiff, caused a Writ of Garnishment to issue in said action; directed to the First National Bank of Arizona, Phoenix; that said garnishee filed its answer in said action on March 27, 1948, disclosing that it had in its possession the sum of Eight Hundred Five and 87/100 Dollars (\$805.87) of said Defendant, as a depositor of said garnishee and that it also had in its possession the sum of Two Hundred Eleven and 50/100 Dollars (\$211.50) of the said Defendant in a special account with the said garnishee; that the above-entitled action was set for trial on August 5, 1948; that on July 2, 1948, the Defendant filed its petition in bankruptcy in the United States District Court for the District of Arizona, and was thereafter adjudged a bankrupt; that your petitioner was duly appointed Trustee in said bankruptcy proceeding.

III.

That on August 5, 1948, attorney for the Plaintiff, Maricopa Packing Company, the attorney for the now bankrupt, Northern Meat Company, Inc., and the Trustee, representing himself without an attorney, appeared before the above-mentioned Superior Court. The attorney for the Plaintiff filed a memorandum brief, the gist of which was that the Writ of Garnishment of the Plaintiff was valid, at least

until such time as the Trustee could affirmatively show that the now bankrupt was in fact insolvent at the time the Writ of Garnishment was obtained, it being admitted that said Writ of Garnishment was obtained within four (4) months prior to the filing of the petition in bankruptcy by the now bankrupt.

IV.

That your petitioner thereupon entered an oral motion for leave to intervene, which was granted; that it was then stipulated by all parties in open court that the issue as to whether the now bankrupt was insolvent at the time the Writ of Garnishment was granted should be resolved by the Referee in Bankruptcy; wherefore, the Court set the date of August 20, 1948, for a final hearing as to whether the said Writ of Garnishment should be set aside, based upon the finding of the Referee, or upon a finding of the District Court upon appeal as the fact of the now bankrupt's insolvency at the time the Writ of Garnishment was obtained.

Wherefore, your petitioner prays a finding by the Referee that the Northern Meat Company, Inc., now bankrupt, was insolvent on March 24, 1948, the date on which the garnishments in question were perfected.

/s/ DONALD B. SHORTRIDGE,
As Trustee only for the Estate of Northern Meat
Company, Inc., bankrupt.

State of Arizona,
County of Maricopa—ss.

I, Donald B. Shortridge, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information and belief.

/s/ DONALD B. SHORTRIDGE,
Petitioner.

Subscribed and sworn to before me this 23rd day of August, 1948.

(Seal) /s/ GLADYSE L. ARMSTRONG,
Notary Public.

My commission expires: July 17, 1949.

[Endorsed]: Filed Aug. 23, 1948.

In the United States District Court
for the District of Arizona

In Bankruptcy—No. B-1215 Phx.

In the Matter of NORTHERN MEAT COMPANY,
INC., Bankrupt.

REFeree'S FINDING OF FACT

A petition having been filed by the Trustee in the above-mentioned bankruptcy on the 17th day of August, 1948, praying that the undersigned Referee find as a fact that the aforesaid bankrupt was insolvent on March 25, 1948, within the meaning of the Federal Bankruptcy Act as Amended,

and said petition having been duly considered, together with the attached profit and loss statement, and having considered the values of the various assets as indicated by an appraisal made thereof on file in this office;

It is found that the bankrupt corporation in this case was insolvent on March 25, 1948, in that the aggregate of its property exclusive of any property which it, through its officers may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, was not, at a fair valuation, sufficient in amount to pay its debts.

/s/ STANLEY A. JERMAN,
Referee.

[Endorsed]: Filed October 2, 1948.

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING
TIME FOR FILING PETITION FOR
REVIEW

It is hereby stipulated and agreed by Donald B. Shortridge, trustee, in the matter of Northern Meat Company, Inc., bankrupt, and Kramer, Morrison, Roche & Perry, attorneys for Maricopa Packing Company, lien creditor of the said bankrupt, that the time for filing of a petition for review of that certain order made and entered by the referee

herein in the above entitled matter on the 25th day of September, 1948, finding that the above named bankrupt was insolvent on March 25, 1948, be and the same is extended to and including Friday, the 22nd day of October, 1948, for the reason that the reporter taking the testimony on the hearing in the above mentioned petition on the 25th day of September, 1948, is unable to furnish a transcript of the testimony taken at said hearing at this time and will be unable to furnish said transcript within the ten day period within which a petition for review is required to be filed in accordance with Rule No. 51 of the Rules of Practice for the United States District Court for the District of Arizona.

Dated at Phoenix, Arizona, this 1st day of October, 1948.

/s/ DONALD B. SHORTRIDGE,
Trustee for the above named bankrupt.

KRAMER, MORRISON, ROCHE & PERRY,
Attorneys for Maricopa Packing Company, Lien
Creditor.

By /s/ L. V. RHUE,

ORDER

Upon reading the above and foregoing stipulation and good cause appearing therefor, it is ordered that the time for the Maricopa Packing Company to file a petition for review of that certain order entered herein on the 25th day of September, 1948, finding that the above named bankrupt was in-

solvent on March 25, 1948, be and the same is hereby extended to and including Friday, the 22nd day of October, 1948.

Dated at Phoenix, Arizona this 1 day of October, 1948.

/s/ STANLEY A. JERMAN,
Referee in Bankruptcy.

[Endorsed]: Filed Oct. 1, 1948.

[Title of District Court and Cause.]

PETITION FOR REVIEW

To Stanley A. Jerman, Referee in Bankruptcy:

The petition of Maricopa Packing Company, an Arizona corporation, respectfully represents:

1. Your petitioner is aggrieved by the order, and finding of fact, herein of Stanley A. Jerman, Referee in Bankruptcy, dated September 25, 1948, finding that said bankrupt was insolvent on the 25th day of March, 1948, a copy of which order is annexed hereto, marked Exhibit A and made a part hereof.

2. The referee erred in respect to said order, and finding of fact, in that referee's finding that the bankrupt was insolvent on the 25th day of March, 1948, was without authority for the reason that there is no allegation of insolvency of the bankrupt on the 25th day of March, 1948, in the petition for finding of fact filed by the trustee herein on the 23rd day of August, 1948, or of the conditions upon which the lien of the garnishment

of the Maricopa Packing Company against the Northern Meat Company, Inc., bankrupt herein, attached on the 25th day of March, 1948, in cause No. 59975, in the Superior Court of the State of Arizona, in and for the County of Maricopa, wherein Maricopa Packing Company, a corporation, is plaintiff, and Northern Meat Company, Inc., a corporation, is defendant, is to be avoided.

3. The referee erred in respect to said order, and finding of fact, in that there is no allegation or proof by the trustee of the conditions upon which the aforesaid lien of garnishment, obtained March 25, 1948, is to be avoided.

4. The referee erred in respect to said order, and finding of fact, in that the referee's finding that the bankrupt was insolvent on the 25th day of March, 1948, was without evidence of the value or appraisement of the assets of the bankrupt on said 25th day of March, 1948.

5. The referee erred in respect to said order, and finding of fact, in that the referee's finding that the bankrupt was insolvent on the 25th day of March, 1948, was based solely upon the testimony and financial report of Laird A. Racey, Certified Public Accountant, who stated positively that his report and testimony was limited to the financial status of the bankrupt, as reflected by the books of said bankrupt on the 25th day of March, 1948, and that he was not competent to evaluate the assets of the bankrupt on said date and that the report made by him and filed as evidence herein was a financial report; that it was not an appraisal;

and that it was a report of book values of the bankrupt on said 25th day of March, 1948.

6. The referee erred in respect to said order, and finding of fact, in that at the hearing before the trustee on the 25th day of September, 1948, he admitted over objection of your petitioner, the testimony of Laird A. Racey, CPA, and the financial statement prepared by said Racey on September 20, 1948, purporting to show the financial condition of the bankrupt, as evidence of value of the assets of the bankrupt on the 25th day of March, 1948.

7. That the referee erred in respect to said order, and finding of fact, in that his finding is contrary to the facts set forth in the petition for finding of fact in that the balance sheets of said bankrupt for the 24th and 25th days of March, 1948, attached to said petition as a part thereof, show that the assets of the bankrupt exceeded its liabilities, copies of which balance sheets are attached hereto marked Exhibits B and C respectively.

8. That the referee erred in respect to said order, and finding of fact, in that his finding is contrary to the law and the evidence.

Wherefore, your petitioner prays that said order, and finding of fact, be reviewed by a Judge, in accordance with the provisions of the Act of Congress relating to Bankruptcy; that said order be reversed, that petitioner be declared to have a good and valid prior lien under the Writ of Garnishment issued on the 25th day of March, 1948,

in the above entitled and numbered cause of the Superior Court of the State of Arizona in and for the County of Maricopa, and that your petitioner have such other and further relief as is just.

Dated at Phoenix, Arizona, this 15th day of October, 1948.

MARICOPA PACKING COMPANY, INC.

By /s/ IRMA LINSENMEYER,
Secretary.

KRAMER, MORRISON, ROCHE & PERRY,
Attorneys for Petitioner.

By /s/ L. V. RHUE,

(Acknowledgment of Service.)

EXHIBIT A

In the United States District Court for
the District of Arizona

In Bankruptcy—No. B-1215 Phx.

In the Matter of NORTHERN MEAT COMPANY,
INC., Bankrupt.

REFEREE'S FINDING OF FACT

A petition having been filed by the trustee in the above-mentioned bankruptcy on the 17th day of August, 1948, praying that the undersigned Referee find as a fact that the aforesaid bankrupt was insolvent on March 25, 1948, within the meaning of the Federal Bankruptcy Act as Amended, and said petition having been duly considered, together with

the attached profit and loss statement, and having considered the values of the various assets as indicated by an appraisal made there of on file in this office;

It is found that the bankrupt corporation in this case was insolvent on March 25, 1948, in that the aggregate of its property exclusive of any property which it, through its officers may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, was not, at a fair valuation, sufficient in amount to pay its debts.

/s/ STANLEY A. JERMAN,
Referee.

EXHIBIT B

NORTHERN MEAT COMPANY, INC.

BALANCE SHEET—March 24, 1948

ASSETS

Cash on Hand (Overdraft).....	\$	10.61*
Cash in Bank		805.87
Deposits:		
Industrial Commission—Insurance	\$	107.00
Sales Tax License		1.00
Light and Water Deposit.....		25.00
		133.00
Accounts Receivable		8.10
Unpaid Checks Receivable		164.24
Office Equipment:		
Cash Box	\$	5.60
Cash Box		3.78
Pencil Sharpener		2.75
Numbering Machine		28.80
Invoice Holder		13.69
		54.62
Shop Equipment:		
Sanitary Chopper	\$	485.00
Federal Steak Maker		237.50
Sanitary Scales		247.50
Vaughan Meat Saw		595.00
Chatillon Beam Scale		48.50
Walk-in Refrigerator		2,544.53
Small tools and equipment.....		186.96
		4,344.99
Truck—1940 Chevrolet		1,001.00
Organization Expense		72.69
Prepaid Interest:		
First National Contract No. EF 3538.....	\$	133.60
First National Contract No. EF 3580.....		95.30
First National Contract No. PLB 14676.....		69.95
		298.85
Prepaid Insurance:		
On Truck	\$	117.52
On Equipment		155.71
		273.23
Total Assets.....	\$	7,145.98

Exhibit B—(Continued)

LIABILITIES

Invoices Payable	\$3,590.03	
Notes Payable—First National Bank:		
Contract No. EF 3538—Principal.....	\$2,219.25	
Contract No. EF 3538—Interest	133.60	
	<hr/>	
	\$2,352.85	
Less Payments	1,074.85	1,278.00
	<hr/>	
Contract No. EF 3580—Principal.....	\$1,508.80	
Less Payments	596.05	912.75
	<hr/>	
Contract No. PLB 14676—Principal.....	\$ 700.00	
Contract No. PLB 14676—Interest	69.95	
	<hr/>	
	\$ 769.95	
Less Payments	\$ 153.99	615.96
	<hr/>	
Arizona Sales Tax Payable.....		15.65
Payroll Taxes Payable:		
Social Security Tax Payable.....	\$ 122.50	
Withholding Tax Payable.....	44.50	
Industrial Commission	53.36	220.36
	<hr/>	
Loans from Stockholders:		
C. V. Winn	\$ 39.38	
Dallas P. Richeson	23.07	
L. K. Dooley	28.20	90.65
	<hr/>	
Total Liabilities.....		\$6,723.40

NET WORTH

Capital Stock (At Par)	\$4,500.00	
Less Deficit	4,077.47	\$ 422.58
	<hr/>	
Total Liabilities and Net Worth.....		\$7,145.98

EXHIBIT C

NORTHERN MEAT COMPANY, INC.

BALANCE SHEET—March 25, 1948

ASSETS

Cash on Hand	\$	47.39*
First National Bank of Arizona—Head Office.....	\$835.26	
First National Bank of Arizona—1st Branch....	29.18	864.44
<hr/>		
Petty Cash		25.00
Customers Accounts—Unpaid		8.10
Returned Checks from Bank—Unpaid.....		164.24
Prepaid Insurance		273.23
Prepaid Items—Interest charged for contracts in advance		298.85
Utility and Other Deposits.....		93.98
Equipment—Automotive		1,021.00
Equipment—Office		54.62
Equipment—Shop		4,309.56
Organization Expense		72.69
<hr/>		
Total Assets.....	\$7,138.32	

LIABILITIES

Invoices Payable	\$3,735.69
Installment Contracts Payable.....	2,806.71
Arizona State Tax Commission—Sales Tax Division.....	15.65
Collector of Internal Revenue.....	167.00
Industrial Commission of Arizona.....	53.36
Loans from Stockholders.....	80.10
<hr/>	
Total Liabilities.....	\$6,858.51

NET WORTH

Capital Stock—Fully paid and non-assessable—	
Outstanding—At Par	\$4,500.00
Deficit	4,220.19
<hr/>	
Total Liabilities and Net Worth.....	\$7,138.32

[Endorsed]: Filed 10/15/48.

In the United States District Court
for the District of Arizona

October 1948 term

at Phoenix

Minute Entry of Monday, October 25, 1948
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

Referee's Certificate on Petition for Review of
Maricopa Packing Company comes on regularly
for hearing this day. No appearance is made on be-
half of the parties herein.

It is ordered that said matter be submitted on
authorities heretofore filed and taken under ad-
visement.

In the United States District Court
for the District of Arizona

October 1948 Term

At Phoenix

Minute Entry of Wednesday, January 12, 1949
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

The Referee's Certificate of Petition for Review
of Maricopa Packing Company having been sub-
mitted and taken under advisement,

It is ordered that the Referee's order and finding
of fact dated September 25, 1948, be and it is af-
firmed. (Docketed 1/12/49.)

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Maricopa Packing Company, a creditor and lien claimant of and against the above named bankrupt and its estate, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the United States District Court for the District of Arizona entered the 12th day of January, 1949, wherein and whereby the order of the Referee in Bankruptcy entered September 25, 1948, is affirmed.

KRAMER, MORRISON, ROCHE & PERRY,
Attorneys for Appellant.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed Feb. 7, 1949.

[Title of District Court and Cause.]

BOND ON APPEAL

Know all men by these presents:

That Maricopa Packing Company, an Arizona corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and authorized to become and be sole surety upon bonds required in the courts of the United States, as Surety, are held and firmly bound unto Donald B. Shortridge, as Trustee in Bankruptcy of Northern Meat Company, Inc., a bankrupt, in the penal sum of Two Hundred Fifty Dollars (\$250), for the payment of which said sum

well and truly to be made said principal and surety bind themselves, and their respective successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that

Whereas, under date of the 12th day of January, 1949 an order was entered in the above entitled court, affirming the order of the Referee in Bankruptcy previously entered the 25th day of September, 1948, and the principal obligor herein has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the order entered by said United States District Court the 12th day of January, 1949, as aforesaid.

Therefore, is the said principal obligor shall pay the costs that may be assessed against it if said appeal is dismissed, or the order appealed from affirmed, or such costs as the appellate court may award if the order appealed from is modified, then this obligation shall be void, otherwise to remain in full force, effect and virtue.

Witness the corporate name of the principal obligor, by its duly authorized attorney, and the corporate name and seal of the surety, by its duly authorized attorney in fact, this 7th day of February, 1949.

MARICOPA PACKING COMPANY,

By /s/ ALLAN K. PERRY,

Its Attorney.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

(Seal) By /s/ C. A. HAMMOND,

Its Attorney-in-Fact.

[Endorsed]: Filed Feb. 7, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
UPON APPEAL

The appellant, Maricopa Packing Company, hereby designates the following portions of the record to be certified and transmitted to the United States Court of Appeals for the Ninth Circuit, to-wit:

1. Certificate on Petition for Review, filed October 18, 1948, and the following papers annexed to such certificate:

(a) Petition for finding of fact, filed with the referee by the trustee in bankruptcy;

(b) Referee's finding of fact;

(c) Stipulation and order extending time for filing petition for review;

(d) Petition for review (omitting Exhibits A, B and C therefrom, as the same are duplicated by other documents included in this designation);

(e) Trustee's Exhibit A (statement of financial condition);

(f) Transcript of testimony taken before referee September 25, 1948 and filed with the referee October 15, 1948;

2. All minute orders entered by the Clerk in the above entitled matter, on or subsequently to October 18, 1948.

3. Notice of Appeal filed concurrently herewith.

4. Bond on Appeal filed concurrently herewith.
5. Statement of points upon which appellant intends to rely upon its appeal, filed concurrently herewith.
6. This designation.

PRAMER, MORRISON, ROCHE & PERRY,
Attorneys for Appellant.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed Feb. 7, 1949.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY
UPON ITS APPEAL

Maricopa Packing Company, who, concurrently with the filing of this statement, has perfected its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the United States District Court for the District of Arizona entered the 12th day of January, 1949, wherein and whereby the order of the Referee in Bankruptcy entered September 25, 1948 is affirmed, intends to rely upon the following points upon its appeal to said United States Circuit Court of Appeals, viz.:

1. That the purported finding of fact by the referee, to the effect that the bankrupt was insolv-

ent on the 25th day of March, 1948 is not supported by any evidence.

2. All of the evidence before the referee, taken in the light most favorable to the trustee, shows that the bankrupt was solvent on March 25, 1948.

3. The petition for finding of fact filed by the trustee does not allege that the bankrupt was insolvent on the 25th day of March, 1948. The referee erred and the District Judge erred in affirming the referee's order, because at the hearing before the referee on the 25th day of September, 1948, he admitted in evidence, over the objection of this appellant, the testimony of Laird A. Racey and the financial statement prepared by the said Racey on September 20, 1948 purporting to show the financial condition of the bankrupt as of that date as evidence of the value of the assets of the bankrupt on the 25th day of March, 1948.

4. The referee erred with respect to his finding of fact and order of September 25, 1948, in that such finding is contrary to the facts set forth in the "Petition for Finding of Fact" filed by the referee in that the balance sheets of said bankrupt for the 24th and 25th days of March, 1948, attached to the said petition as a part thereof, show affirmatively that the assets of the bankrupt exceeded its liabilities on those dates.

5. The District Judge erred in failing and refusing to enter an appropriate order to the effect that this appellant has a good and valid prior lien under the writ of garnishment issued on the 25th

day of March, 1948, out of the Superior Court of the State of Arizona in and for the County of Maricopa, referred to in these proceedings.

KRAMER, MORRISON, ROCHE & PERRY,
Attorneys for Appellant.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed Feb. 7, 1949.

In the United States District Court
for the District of Arizona

CLERK'S CERTIFICATE

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in case No. B-1215 Phoenix In the Matter of Northern Meat Company, Inc., Bankrupt, on the docket of said Court.

I further certify that the foregoing documents, to-wit:

1. Referee's Certificate on Petition for Review, and Record on Review described therein and attached thereto, filed October 18, 1948;
2. Minute entry of October 25, 1948;
3. Minute entry of January 12, 1949;
4. Notice of Appeal, filed February 7, 1949;

5. Bond on Appeal, filed February 7, 1949;
6. Statement of Points upon which appellant intends to rely upon its appeal, filed February 7, 1949;
7. Designation of Contents of Record Upon Appeal, filed February 7, 1949;
8. Trustee's Petition for Finding of Fact, filed with the referee August 23, 1948 and with the District Court February 23, 1949 are the original documents filed in said case and designated in the appellant's Designation of Contents of Record Upon Appeal, excepting the minute entries entered by the clerk, and that the foregoing copies of minute entries of October 25, 1948 and January 12, 1949 are true and correct copies of the originals thereof remaining in my office.

I further certify that the clerk's fee for preparing and certifying this record on appeal amounts to the sum of \$1.20 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court at Phoenix, Arizona, this 23rd day of February, 1949.

(Seal) /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]. No. 12193. United States Court of Appeals for the Ninth Circuit. Maricopa Packing Company, Appellant, vs. Donald B. Shortridge, Trustee in Bankruptcy of the Estate of Northern Meat Company, Inc., Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed February 25, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12193

In the Matter of NORTHERN MEAT COMPANY,
INC., Bankrupt.

MARICOPA PACKING COMPANY,

Appellant,

vs.

DONALD B. SHORTRIDGE, as Trustee in Bank-
ruptcy of Northern Meat Company, Inc.,

Appellee.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD TO BE
PRINTED.

1. Appellant intends to rely upon the points set
forth in its "Statement of Points Upon Which

Appellant Intends to Rely Upon Its Appeal," heretofore filed in the District Court and included in the record transmitted to this Circuit Court of Appeals.

2. Appellant designates for printing herein the entire record, except Exhibits A, B and C attached to the "Petition for Review," as such exhibits are duplicated by other documents included in the record.

/s/ ALLAN K. PERRY.

/s/ L. V. RHUE,
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed February 25, 1949. Paul P. O'Brien, Clerk.